

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on March 26, 1999
at 3:30 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SJ 17, 3/26/1999; SJ 18,
3/26/1999
Executive Action: HB 183; SJ 18; SJ 17; HB 340;
HB 74; HB 458; HB 617; HB 596;
HB 298; SB 252; SB 253; SB
254; SB 255

EXECUTIVE ACTION ON HB 183

Motion: SEN. GROSFIELD moved that HB 183 BE CONCURRED IN.

Motion: SEN. GROSFIELD moved that AMENDMENTS HB018301.ALM BE ADOPTED. EXHIBIT(nas68a01).

Opponent Testimony: Aaron Browning of Northern Plains Resource Council submitted written testimony, in his absence, in opposition to the amendments. EXHIBIT(nas68a02).

Discussion:

Mr. Everts stated the amendments require the Plaintiff to issue a summons of service and process within 60 days after filing a legal action seeking review of Department decision. This applies to actions pending on the effective date of this act and the 60 day time period must start on the effective date of this act.

SENATOR COCCHIARELLA asked if the amendment is adopted what does it do to the opportunity for some kind of negotiations to happen before going to Court? **SEN. GROSFIELD** stated the 60 day time frame is shorter but still allows ability to negotiate through that time frame. **SEN. COCCHIARELLA** asked the reasoning behind the amendment? **SEN. GROSFIELD** stated this amendment came from a mine in Sweet Grass County. The amendment has been in draft status for about a month with everyone being in agreement until about a week ago. He referred the question to **Chris Allen, Vice President of Government Affairs, Stillwater Mining Co.**

SENATOR CRISMORE asked for a brief statement of the effects and the reason for the amendment. **Mr. Allen** stated they have embarked on a \$385 million dollar expansion project at the Stillwater Mine and the East Boulder Mine. Their company is headquartered in Columbus, Montana. They depend on the equity markets to raise money and the investment banking system in order to meet their capital needs. They are concerned that a suit, which is filed but has no certain date by which it may be served and prosecuted, has a chilling effect on their ability to raise capital. The suit which has been filed but not served, had a significant impact on their stock price and added an extra six weeks to the negotiation of their revolving line of credit. They were seeking \$170 million dollars of credit. The issue for the banking community was when will they be able to settle this and is there a date certain? Because neither the Department nor the mine had been served, they were unable to give them a date.

They believe the ability for citizens to bring suit against the Department is vital and they also believe negotiation is important. They think the negotiations can take place during the environmental process and indeed after the lawsuit has been duly served to the appropriate parties. Without it, they are left in limbo, they cannot prepare a defense because they have not been

served, yet the people willing to invest in them and loan them money in order to conduct their operations, are very concerned there is no way to capture what the outcome might be or when it might occur.

Vote: Motion that **AMENDMENTS HB018301.ALM BE ADOPTED** carried 9-2 with Cocchiarella and Wilson voting no.

Motion/Vote: SEN. GROSFIELD moved that **HB 183 BE CONCURRED IN AS AMENDED**. Motion carried 11-0.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 6.3; Comments : None.}

HEARING ON SJ 17

Sponsor: SENATOR DOROTHY ECK, SD 15, BOZEMAN

Proponents:

Joan Miles, Lewis & Clark County Health Department
Missoula City-County Health Department
Byron Roberts, Montana Building Industry Association

Opponents: None.

Opening Statement by Sponsor:

SENATOR DOROTHY ECK, SD 15, BOZEMAN, stated she met with county officials last fall to see what they wanted out of the legislative session. One of the things they asked for was some clarification in the requirements for septic systems in subdivisions. Right now the sanitation department and Department of Health can do minor subdivisions if they have capable staff. They felt it would move things along more rapidly and more satisfactorily if they could also do major subdivisions.

By the time she submitted the bill she found the County Departments had started a process of working with the Department. She was convinced after meeting with the Department and with the local group of county sanitarians that the Department could be trusted to work with them in good faith and develop rules. The resolution asks that the group working with the Department writing rules, report to EQC on a quarterly basis to make sure they proceed with this and get the job done. At the same time the group working with **REP. OHS** because they are concerned about the dual authority of the state and county. What they wanted to begin with was to turn the authority over to the state unless the

county was willing to accept primacy. As the resolution is formed, it would also have this group working with the Consensus Council to report also on a quarterly basis. With these two groups working in quite specific ways and reporting to **EQC**, maybe toward the end of the interim they will have recommendations. They may decide they don't need any legislation or just minor legislation. She does not necessarily think this warrants a full blown study by **EQC**. This could be a very productive interim where these problems that have been facing the state for as long as she can remember will be solved and will come up with a system that will work. **EXHIBIT (nas68a03)** and **EXHIBIT (nas68a04)**.

Proponents' Testimony:

Joan Miles, Director, Lewis & Clark County Health Department, stated they were in favor of the concept of having additional oversight and having **EQC** aware of what they are doing during the interim. **(EXHIBIT 4)** is the product of a lot of work by many parties that have agreed to work through some specific issues with the Consensus Council. They have also agreed to continue working on rule making with **DEQ**. She was concerned about another separate study going on. Certainly the concept of funneling some of the information that is ongoing so **EQC** members can be aware of the issues and be educated. The more legislators that know the issues they are working on and the progress they are making would be a good idea.

Missoula City-County Health Department, submitted a letter of testimony in favor of the bill in their absence as per **EXHIBIT (nas68a05)**.

Byron Roberts, Montana Building Industry Association, stated they need water quality statutes and rules that make it easier and quicker to site and build septic systems. Turf issues and duplicate reviews should be eliminated and uniform standards should be enacted so there is predictability when subdividing and building in different jurisdictions. It must be recognized there are times when these standards do not fit all cases and must have a process to make accommodations. A system is needed that reduces lot cost at a time when portability in Montana is at a crisis level. A system is needed that increases densities and promotes incentives to clustering and a system that protects our groundwater to promote health and safety. They feel all these objectives are mutually compatible and they feel **SJ 17** provides an opportunity to sit down again and accomplish these objectives. He encouraged the committee's support.

Opponents' Testimony: None.

Informational Testimony:

Mark Simonich, Director, Department of Environmental Quality, stated the Department has made a commitment to work through the Sanitation and Subdivision Act. The rules look at an obligation to go through a rule promulgation at this point in time. They are committed to revise their technical bulletins as well. The Department has already entered into an agreement to carry all that forward. They have been working with a Task Force of people including individuals representing the Realtors or developers as well as local county health officers. In working with **REP. OHS** as he introduced his piece of legislation, they did their best to try to convince him the bill was not timely and they thought they had an opportunity to find solutions during the interim without taking the leap of making those changes in statute at this time. They agreed to sign the letter referenced in **(EXHIBIT 4)** which speaks to the effort of going to the Consensus Council to look at the additional issues of the statute itself and where changes might be necessary in the statute to make the various laws work together better. If another study is added on top of this it becomes a bit top heavy and difficult to negotiate through, however, they are not opposed to working with **EQC**. He committed that the Department would work with **EQC** through the interim and report to them on a quarterly basis or as often as they would like, and keep **EQC** fully informed of the progress being made both through the current task force efforts as well as the effort to work with the Consensus Council. He would prefer not to see another study on top of this effort as it would involve the same people. The more studying done, the less work that actually gets done reviewing subdivisions.

Questions from Committee Members and Responses:

SENATOR TAYLOR asked for an explanation of the difference in the studies? **SENATOR ECK** stated **EQC** has a record of doing splendid studies. Since she went off **EQC** she has been working with a committee that makes good use of oversight because they work with dozens of groups that do studies. These groups report to them. She feels if **EQC** receives a quarterly report, they will know they are keeping their commitment to work. She would like to be assured the process will move forward and the reporting mechanism is good. It is quite possible that once the rules have been finished and once the Consensus Council process has been worked through they will come up with some recommendations to bring to **EQC** and from that point they will work on what needs to be presented to the next legislature, if anything.

Closing by Sponsor:

SENATOR DOROTHY ECK, SD 15, BOZEMAN, stated this is a period of hope of accomplishing something when there are this many parties who are willing to sit down and work together to solve their problems. That is what we are all about.

{Tape : 1; Side : A; Approx. Time Counter : 6.3 - 20.7; Comments : None.}

HEARING ON SJ 18

Sponsor: **SENATOR BEA MCCARTHY, SD 29, ANACONDA**

Proponents:

Don Allen, Western Environmental Trade Association
Cary Hegreberg, Montana Wood Products Association
Frank Crowley, ASARCO
Steve Bullock, Department of Justice, Representing Attorney
General Joe Masurek
Jill Andrews, Montana Mining Association
Janet Ellis, Montana Audubon Society
Anne Hedges, Montana Environmental Information Center
Bill Snoddy, McDonald Gold Project
Mark Simonich, Director, Department of Environmental Quality

Opponents: **None.**

Opening Statement by Sponsor:

SENATOR BEA MCCARTHY, SD 29, ANACONDA, presented **SJ 18** which is a request to the **Environmental Quality Council** to do an interim study of the **Montana Environmental Policy Act**. **MEPA** was put into place in 1972 although it was looked at again in 1988. It has not been extensively analyzed or updated since that time. The resolution is before the committee because of **HB 142** and **SB 413**. Because of those bills, it was discussed as a group, to submit this resolution.

Proponents' Testimony:

Don Allen, Western Environmental Trade Association, stated this resolution will offer an opportunity for the analyzation of the current laws, how they work or do not work and help to improve

the **MEPA** process. It is a very difficult process now that is causing many problems. He looks forward to participating and hopes to arrive at some answers.

Cary Hegreberg, Montana Wood Products Association, spoke in support of the resolution and pledged to be a productive participant during the interim study.

Frank Crowley, ASARCO, stated **MEPA** was first enacted in 1972. That speaks to the need for updating this important statute. **ASARCO** is now in it's 13th year of trying to obtain a permit to mine some of the precious resources at Noxon. On that basis alone, they are a strong supporter of any legislation that would help re-examine the statute to leave intact it's basic purposes but also to refine it based upon the needs of today.

Steve Bullock, Department of Justice, Representing Attorney General Joe Masurek, spoke in support of **SJ 18**. The issue of effectiveness, cost benefits, and proper implementation of **MEPA** has already been debated much during the session through **HB 142** and **SB 413**. They feel any revision of **MEPA** should be done through careful and deliberate analysis through the process set out in **SJ 18**.

Jill Andrews, Montana Mining Association, spoke in support of the resolution and hope they can find a more predictable solution for permitting.

Janet Ellis, Montana Audubon Society, spoke in support of the resolution. It is very timely and they look forward to participating.

Anne Hedges, Montana Environmental Information Center, said they will participate in good faith in the study. They support the resolution.

Bill Snoddy, McDonald Gold Project, stated they have been in the permitting process for five years and have had first hand experience with **MEPA** which has not all been good. He believes the **EQC** is a proper vehicle for studying **MEPA**. He encourages **EQC** to spend the time necessary to give a thorough review through the entire biennium.

Mark Simonich, Director, Department of Environmental Quality, spoke in support of **SJ 18**. It is long overdue speaking from the perspective of one who oversees the **EIS** and ultimately sign the record of decision as well as the one who gets sued after signing them. He believes the point has been reached where **MEPA** has

become more costly, cumbersome and time consuming than anyone thought it would be when first passed into law. He urges **EQC** to take this on and give this their highest priority.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SENATOR KEATING questioned if **EQC** could handle this within their current budget? **Todd Everts** replied the **EQC** role has expanded since **SB 11** with oversight of three agencies. They have the potential of four interim studies. The Council will make a decision at their first meeting for prioritizing the workload and how to allocate their resources. They have adequate resources in their current budget to do this study.

Closing by Sponsor:

SENATOR BEA MCCARTHY, SD 29, ANACONDA, stated they are going to try to identify options and make recommendations for legislation to the next legislature. As a member of **EQC** she will work hard to see that happens.

{Tape : 1; Side : A; Approx. Time Counter : 20.7 - 36; Comments : None.}

EXECUTIVE ACTION ON SJ 18

Motion/Vote: **SEN. COCCHIARELLA** moved that **SJ 18 DO PASS**. Motion carried 11-0.

Discussion:

SENATOR GROSFIELD stated for the record the resolution is mostly focused on agency but it also has to do with applicants and the burdens of that. In order to deal effectively with page 2, lines 5 and 6 of the resolution, he would encourage **EQC** look at the committee records from both committees for both bills to be sure they are addressing the variety of concerns that were raised. He does not believe the study would bring to light all those concerns without reviewing the committee records.

EXECUTIVE ACTION ON SJ 17

Motion: **SEN. COCCHIARELLA** moved that **SJ 17 DO PASS**.

Discussion:

Todd Everts presented a conceptual amendment for Page 1, Line 22 which would read: "That the Environmental Quality Council *be requested to give priority to the study or oversight of:*

SENATOR COCCHIARELLA stated her concern was the workload of **EQC**. She feels the council would look at this process and say a report is enough.

SENATOR CRISMORE questioned if her intent was just for a report? **SEN. COCCHIARELLA** stated no, either they can choose to study or they choose to accept the report of the Consensus Council. It gives **EQC** the option and does not mandate a study.

SENATOR COLE asked if the priority was on the study? **Mr. Everts** stated it is a priority on the study or the oversight. It is either/or.

Motion/Vote: **SEN. COCCHIARELLA** moved an **AMENDMENT TO ADD "BE REQUESTED TO GIVE PRIORITY TO THE STUDY OR OVERSIGHT OF" ON PAGE 1, LINE 22, DO PASS. Motion carried 11-0.**

Motion: **SEN. MCCARTHY** moved that **AMENDMENT SJ001701.AMV BE ADOPTED.**

Discussion:

Mr. Everts explained the proposed amendments.

SENATOR KEATING stated he felt the amendment complicates the resolution. The first amendment says you can do the study yourself or you can rely on the Consensus Council Study. Then later it says the Consensus Council has to report quarterly. There is confusion what direction **EQC** is supposed to take from the legislative intent. He suggests this amendment not be adopted.

SENATOR COCCHIARELLA stated she was concerned if the amendments were not adopted that nothing has been done about the incorporation of this group.

Mr. Everts stated **EQC** can request updates from the Consensus Council irregardless of whether this is in the study resolution or not. The amendments formally include the Consensus Council as a process actually going on.

SENATOR MCCARTHY stated she thought the first amendment would be needed.

{Tape : 1; Side : A; Approx. Time Counter : 36 - 45; Comments : None.}

SENATOR COCCHIARELLA stated the amendments narrow the scope of the resolution and makes it easier to deal with in **EQC**.

Vote: Motion that **AMENDMENT SJ001701.AMV BE ADOPTED** carried 6-5 by Roll Call Vote with **Senators Crismore, Mahlum, Cole, Keating and Miller** voting no.

Motion: **SEN. MCCARTHY** moved that **SJ 17 DO PASS AS AMENDED**.

Discussion:

SENATOR KEATING stated a parallel activity is being set up. It is a duplication of effort and he does not see a need for the resolution. It is a waste of time and money.

SENATOR CRISMORE stated he felt it is being taken care of through **REP. OHS** bill in going to the Consensus Council.

SENATOR MILLER stated he agreed with **KEATING** and **CRISMORE**.

Vote: Motion that **SJ 17 DO PASS AS AMENDED** failed 5-6 by Roll Call Vote with **Senators Crismore, Mahlum, Cole, Grosfield, Keating and Miller** voting no.

Motion/Vote: **SEN. KEATING** moved that **SJ 17 BE TABLED**. Motion carried 6-5 with **Senators Cocchiarella, McCarthy, Roush, Taylor and Wilson** voting no.

EXECUTIVE ACTION ON HB 340

Discussion:

Mr. Everts stated **SEN. COCCHIARELLA** had asked if there was money in the executive budget in **HB 2** for the Montana Department of Transportation to cover these costs. **Mr. Mitchell** researched this and found the answer to be no. The second question was if there was a cost to counties? **Mr. Mitchell** located the information presented in **EXHIBIT (nas68a06)** from the 1997 session which is almost identical to the current bill. The county cost is about \$30,000 statewide. Some felt that was a conservative

number and others felt the impact was not that great on the counties.

SENATOR TAYLOR asked does the amendment take the fiscal completely out? **EXHIBIT(nas68a07)**. **Mr. Everts** stated it takes the **MDOT** out which is the \$1.2 million hit but it does not take the counties out. **SEN. TAYLOR** stated this could mandate money to the counties. **SEN. CRISMORE** stated it could be that amount if it is accurate.

SENATOR MAHLUM questioned if he could provide a ball park figure as to what it might be for counties? **Mr. Mitchell** stated the ball park figure was \$30,000 statewide for the counties.

Motion/Vote: **SEN. TAYLOR** moved that **HB 340 BE TABLED**. Motion carried 7-4 by Roll Call Vote with **Senators Crismore, Grosfield, Keating and McCarthy** voting no.

EXECUTIVE ACTION ON HB 74

Motion: **SEN. KEATING** moved that **HB 74 BE CONCURRED IN**.

Discussion:

SENATOR KEATING stated this bill allows the Department to issue \$10 million in general obligation bonds to match \$50 million from **EPA** for loans to cities and towns for drinking water projects.

Motion/Vote: **SEN. GROSFIELD** moved that **AMENDMENTS HB007401.ALM BE ADOPTED**. Motion carried 11-0. **EXHIBIT(nas68a08)**.

Motion/Vote: **SEN. KEATING** moved that **HB 74 BE CONCURRED IN AS AMENDED**. Motion carried 11-0. **SENATOR KEATING** will carry bill to Senate Floor.

EXECUTIVE ACTION ON HB 458

Motion: **SEN. MCCARTHY** moved that **HB 458 BE CONCURRED IN**.

Discussion:

SENATOR TAYLOR stated this bill is another one for **EQC**. What is the difference between this bill and the one just voted down?

Mr. Everts stated this is a statutory bill, not a resolution, that basically requires the **EQC**, in cooperation with interested parties and stakeholders, to review and summarize information with voluntary Best Management Practices for streamside corridor management and to coordinate that information and disseminate it.

SENATOR TAYLOR said it is a direction to **EQC** and he would like the opinion of someone on **EQC**.

SENATOR McCARTHY stated at the first meeting they prioritize their workload. Last interim they divided the committee into two subcommittees and accomplished a greater workload by that means. She feels this bill fits in with some of the issues they have already worked on, especially the water policy subcommittee. She feels they can do it.

SENATOR CRISMORE stated he agreed with **SEN. McCARTHY**. They made a commitment during the last interim when they started some of this and he feels they need to follow through.

Mr. Everts stated this requires the **EQC** to get several people together to see what the voluntary practices are on the ground, evaluate them and re-disseminate that information in a coherent package to folks along stream corridors to voluntarily implement those best management practices.

SENATOR KEATING stated New Section 2 is the direction of the proposal.

Vote: Motion that **HB 458 BE CONCURRED IN** carried 11-0. **SENATOR McCARTHY** will carry bill to Senate Floor.

EXECUTIVE ACTION ON HB 617

Motion/Vote: **SEN. MILLER** moved that **HB 617 BE CONCURRED IN**. **Motion carried 11-0.** **SENATOR MILLER** will carry bill to Senate Floor.

EXECUTIVE ACTION ON HB 596

Motion: **SEN. TAYLOR** moved that **HB 596 BE CONCURRED IN**.

Motion: **SEN. TAYLOR** moved that **AMENDMENTS HB059601.ALM BE ADOPTED**.

Discussion:

Mr. Mitchell stated the amendments strike (b) on the first page which was originally put into the bill as part of the CI-75 requirement. It was replaced by saying the Department may charge a reasonable fee for purchase of the hard-copy compilation... The title of the bill was in error and Amendment #1 corrects the error.

Vote: Motion that **AMENDMENTS #HB05601.ALM BE ADOPTED** carried 11-0.

Motion/Vote: **SEN. TAYLOR** moved that **HB 596 BE CONCURRED IN AS AMENDED**. Motion carried 10-1 with Senator Cocchiarella voting no. **SENATOR TAYLOR** will carry bill to Senate Floor.

EXECUTIVE ACTION ON HB 298**Discussion:**

SENATOR COCCHIARELLA stated out of respect for the process and in apology to the committee she would like an opportunity to bring **HB 298** off the table because of how she changed her vote. She does not want the committee to look bad because of her actions.

Motion/Vote: **SEN. COCCHIARELLA** moved **TO REMOVE HB 298 FROM THE TABLE**. Motion failed 5-6 by Roll Call Vote with Senators Crismore, Cole, Grosfield, McCarthy, Roush and Wilson voting no.

EXECUTIVE ACTION ON SB 252

Motion/Vote: **SEN. GROSFIELD** moved that **SB 252 BE TABLED**. Motion carried 11-0.

EXECUTIVE ACTION ON SB 253

Motion/Vote: **SEN. GROSFIELD** moved that **SB 253 BE TABLED**. Motion carried 11-0.

EXECUTIVE ACTION ON SB 254

Motion/Vote: **SEN. GROSFIELD** moved that **SB 254 BE TABLED**. Motion carried 11-0.

EXECUTIVE ACTION ON SB 255

Motion/Vote: SEN. GROSFIELD moved that SB 255 BE TABLED. Motion carried 11-0.

SENATOR TAYLOR thanked SENATOR KEATING for all the knowledge and information he has brought to this committee over his years of service. He also thanked CHAIRMAN CRISMORE for a job well done this year.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 31; Comments : None.}

ADJOURNMENT

Adjournment: 5:00 P.M.

SEN. WILLIAM CRISMORE, Chairman

JYL SCHEEL, Secretary

WC/JS

EXHIBIT (nas68aad)